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NO.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

SWIFTSHIPS, INC.
Petitioner,

versus

LORAL CORPORATION
Respondent

On Petition for Writ of Certiorari To The
United States Court of Appeals For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the arbitration award that is the subject of this litigation was made in the Northern District of Georgia and thus, venue and/or subject matter jurisdiction were proper in the United States District Court for the Northern District of Georgia to confirm the arbitration award pursuant to 9 U.S.C. section 9, where the arbitration hearings were conducted in Washington, D.C., and no arbitration hearings were conducted in the Northern District of Georgia, and the parties in their agreement to arbitrate did not specify any court which a judgment confirming the arbitration award would be entered.

LIST OF PARTIES TO THE PROCEEDING IN THE ELEVENTH CIRCUIT COURT OF APPEALS, PARENT COMPANIES, AND NON-WHOLLY OWNED SUBSIDIARIES

1. Swiftships, Inc., petitioner

2. Loral Corporation, respondent

3. Lockheed Martin Corporation, apparent purchaser of Loral Corporation

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OFFICIAL AND UNOFFICIAL REPORTS OF THE OPINIONS AND ORDERS ENTERED IN THE CASE BY COURTS OR ADMINISTRATIVE AGENCIES

Loral Corporation v. Swiftships, Inc.., 77 F.3d 420 (11th Cir. 1996)

STATEMENT OF JURISDICTION

Swiftships, Inc. seeks review of the Judgment of the United States Eleventh Circuit Court of Appeals of March 13, 1996. Swiftships, Inc.'s Petition for Rehearing and Suggestion of Rehearing En Banc was denied by order dated May 29, 1996. Swiftships, Inc.'s Application for Extension of Time to File Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit was granted by Justice Kennedy, extending the time to and including September 11, 1996. The jurisdiction of this Court is invoked under 28 U.S.C. section 1254(1).

STATUTORY PROVISION INVOLVED

9 U.S.C. § 9:

> If the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, and shall specify the court, then at any time within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title. If no court is specified in the agreement of the parties, then such application may be made in the United States court in and for the district within which such award was made.

9 U.S.C.A. §9 (West 1970).

STATEMENT OF THE CASE

Jurisdiction in the United States Circuit Court for the Eleventh Circuit was pursuant to 28 U.S.C. Section 1291, and, alternatively, pursuant to 28 U.S.C. Section 1292(a)(1). Jurisdiction in the district court was pursuant to 28 U.S.C. Section 1332.

On Friday, September 8, 1995, Loral Corporation filed its Petition to Confirm Arbitral Award and its Motion for Temporary Restraining Order and Preliminary Injunction. Rl-1-1; R1-2-1. In its Petition to Confirm Arbitral Award, Loral Corporation alleged at Paragraph 6 that it "seeks to confirm an arbitral order made in Atlanta, Georgia." R1-1-6.

On Wednesday, September 13, 1995, counsel for Swiftships, Inc. made contact with the offices of the District Court after becoming aware of the entry of the Temporary Restraining Order and inquired with regard to obtaining a hearing to dissolve the Temporary Restraining Order. On the following day, Thursday, September 14, 1995, Loral Corporation filed its Ex Parte Motion for Extension of Temporary Restraining Order which was accompanied by an Order granting same. Rl-3-1. The District Court issued the Order granting Petitioner's Motion for Extension of Temporary Restraining Order on September 14, 1995. Rl-8-1.

On Friday, September 15, 1995, Swiftships filed its Motion to Dismiss Petition to Confirm Arbitral Award Pursuant to Rule 12(b) and to Dissolve Temporary Restraining Order. R1-5-1. After contacting the Court, Swiftships was advised that the District Court had extended the Temporary Restraining Order and scheduled the hearing on Loral' s Motion for Preliminary Injunction and Swiftships' Motion to Dismiss Petition to Confirm Arbitral Award and to Dissolve Temporary Restraining Order for Monday, September 18, 1995, at 9:00 a.m. R1-8-1.

The parties appeared and argued the respective motions pending before the District Court on Monday, September 18, 1995. On Monday, September 18, 1995, Loral Corporation served upon Swiftships, Inc. its Brief in Response to Respondent's Motion to Dismiss and in Support of Petitioner's Motion for Preliminary Injunction, which brief was accompanied by the first declarations submitted to the District Court, the Declarations of Mr. J. Keith Burt and Mr. Thomas S. McConville. R1-6-5. These two declarations asserted an issue which had never even been pleaded, i.e., that they had heard the arbitrators select Atlanta, Georgia to hold a hearing on the merits. This new argument was contrary to its petition which was based upon the award having been made in Atlanta. R1-1-1. Swiftships, Inc. was prevented from obtaining and presenting evidence to rebut these declarations due to the sequence of events and due to having received Loral Corporation's declarations only during the hearing on the Preliminary Injunction. The following day, on Tuesday, September 19, 1995, the District Court issued an Order denying Swiftships' Motion to Dismiss Petition to Confirm Arbitral Award Pursuant to Rule 12(b) and to Dissolve Temporary Restraining Order and granting Loral's Motion for Preliminary Injunction relying upon the evidence before it at the time of the hearing on September 18, 1995. R1-9-1.

On September 27, 1995, Swiftships filed its Motion for New Trial and to Dissolve Preliminary Injunction Order. R1-11-1. On the same date, Swiftships moved, pursuant to U.S. District Court Local Rule 20-3, for an expedited hearing on the Motion for New Trial and to Dissolve Preliminary Injunction. In support of these Motions, Swiftships submitted Affidavits of Dennis Spurgeon and Carl Onesty, one of the arbitrators. On October 4, 1995, the trial court directed Joseph Morris and Gerald Asken, the other two arbitrators, to submit Affidavits within ten days of receipt of its Order and directed Loral Corporation to perfect

service of the Order on those two persons. Yet the trial court had not acted upon Swiftships' Motion for New Trial and to Dissolve Preliminary Injunction and the injunction remained in place to the overwhelming detriment of Swiftships, Inc. Neither had the trial court acted upon Swiftships' Motion for Expedited Hearing.

For these reasons, Swiftships withdrew these Motions and filed its appeal in the United States Court of Appeals for the Eleventh Circuit. The appeal was from the District Court's September 19, 1995 Order, entered on September 25, 1995, denying Swiftships' Motion to Dismiss Petition to Confirm Arbitral Award Pursuant to Rule 12(b) and to Dissolve Temporary Restraining Order and granting Loral's Motion for Preliminary Injunction. Among other things, Swiftships challenged the whether subject matter jurisdiction and venue were proper in the Northern District of Georgia.

On March 13, 1996, this Eleventh Circuit issued its decision, confirming the District Court's Order. Among other things, the court ruled that subject matter jurisdiction for an action under 9 U.S.C. section 9 is not based on the location in which the arbitration award was made. The Eleventh Circuit ruled that section 9 "defines the appropriate venue for confirming an arbitration agreement" and that "[a]fter reviewing the record, we hold that the district court did not err in finding that the parties agreed to arbitrate in Atlanta. For purposes of § 9, the arbitration award was made in Atlanta, and jurisdiction was therefore proper in Atlanta." *Loral Corporation v. Swiftships, Inc..*, 77 F.3d 420 (11th Cir. 1996). Swiftships, Inc.'s Petition for Rehearing and Suggestion of Rehearing En Banc was denied by order dated May 29, 1996. Swiftships, Inc.'s Application for Extension of Time to File Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit was granted by Justice Kennedy, extending the time to and including September 11, 1996.

ARGUMENT

Facts

Swiftships, Inc. is a small shipyard located in Morgan City, Louisiana, and employs approximately three hundred workers. In January, 1992, Swiftships entered a contract to construct three coastal mine hunting vessels for the Government of Egypt. That same month, Swiftships subcontracted with Paramex Systems Corporation, now Unisys Corporation, to provide the combat systems for the three vessels. During discussions between Unisys and Swiftships concerning disputes over payments, contract delays, and the inability of the sonar to detect mines at the required depth, Unisys initiated arbitration proceedings on August 23, 1994 in the Washington D.C. office of the American Arbitration Association (AAA) to recover $14.4 million in invoices allegedly due. On August 25, 1994, Swiftships initiated arbitration to cure alleged defaults of Unisys, particularly to proceed to test the sonar to determine whether it could meet required contract specifications.

After Unisys failed to get an escrow of the $14.4 million in a Texas state court proceeding, and that proceeding was dismissed for lack of jurisdiction, Unisys proceeded within the arbitration filed in Washington, D.C. to try to obtain an escrow under the terms of the arbitration clause of the Subcontract. On September 9, 1994, Swiftships filed a formal counterclaim in the Washington, D.C. office of the AAA due to various defaults of Unisys. On September 22, 1994, a telephone conference was held between attorneys for Unisys and Swiftships, and the three arbitrators. As a result of that telephone conference, a Notice of Confirmation of Contents of Telephonic Conference Call Conducted on September 22, 1994 was specifically issued on behalf of the arbitration panel which was "written confirmation of the matters discussed and considered during that call...." R1-11-Exhibit 2, Exhibit A. This Notice of Confirmation scheduled a hearing in the arbitration in Washington, D.C. for October 13,

1994 to consider a request by Swiftships to order testing of the sonar and a request by Unisys to have Swiftships place $14.4 million into an escrow account. Absolutely nothing was confirmed or stated in this Notice with respect to any hearing or proceeding to be held in Atlanta, Georgia. R1-11-Exhibit 2, Exhibit A. This hearing was later continued to October 31, 1994, when it was actually held in the Washington, D.C. office of the AAA. As a result of the hearing, an order was issued on December 6, 1994 by the arbitrators denying the relief sought by Unisys and Swiftships. R1-11-Exhibit 6. The arbitrators specifically rejected relief sought by Unisys to have Swiftships place $14.4 million into escrow under the arbitration clause of the Subcontract on the basis that there were many factual allegations concerning "motives, intentions and ability of each of the parties to comply with the terms of the contract." R1-11-Exhibit 6, Par. I and IX.

Subsequent to denial of relief sought in the arbitration proceeding in Washington, D.C., Unisys and Swiftships continued to negotiate on the basis that Unisys would aggressively proceed forward to test the sonar and complete Sea Acceptance Trials (SAT's), after which Swiftships would make payments that could allow it to remain in business and obtain new contacts. During these negotiations, Swiftships refused to specifically assign any proceeds to Unisys. Swiftships also refused to have any payments under the prime contract made directly to Unisys. R1-11-Exhibit 4, Par. 35. As a result of the hearing in Washington, D.C. and subsequent negotiations, on December 30, 1994, Unisys and Swiftships submitted a proposed order to the arbitrators for consideration pursuant to Rule 43 of the AAA Rules of Commercial Arbitration. The proposed order was considered by

the arbitrators, and was signed by the last of the three arbitrators on March 25, 1995. R1-1-Exhibit 3.

Swiftships has been paying a processing fee to the Washington, D.C. office of the AAA to continue to administer the arbitration and impanel the three arbitrators. R1-11-Exhibit 3. Subsequent actions remained to be taken by Swiftships and by Unisys under the order. The arbitration has never been transferred to Atlanta or anywhere else other than the Washington, D.C. office of the AAA.

Entirely unknown to Swiftships at the time, and prior to the execution of the interim order of the panel by the last arbitrator on March 25, 1995, Loral Corporation (Loral) agreed to purchase Unisys' claim against Swiftships. Loral was and is a totally unrelated company to Unisys. On March 20, 1995, Loral agreed to purchase the claim against Swiftships from Unisys. R1-11-Exhibit 7, Par. 7. Swiftships had not been advised, notified or asked to consent to the assignment of the claim or Subcontract to Loral. In fact, it was not until June 20, 1995 (3 months later), that Loral notified Swiftships in writing that Unisys had agreed to sell the Subcontract to Loral. Only two days later, Swiftships requested, in writing, all contracts which formed the basis of the alleged sale to determine how it affected rights and liabilities under the subcontract. Loral refused to provide such information. R-1-11-Exhibit 7, Par. 8 and 9.

Consequently, on August 7, 1995, Swiftships filed a declaratory action in Louisiana state court against Loral and Unisys. R1-11-Exhibit 7. Swiftships alleged in the Louisiana suit that, pursuant to Louisiana Civil Code Article 2652, Swiftships is entitled to judgment declaring that Swiftships no longer has any obligation to Unisys, and may extinguish any obligation to Unisys by paying to Loral the price Loral paid for the litigious right acquired by Loral against Swiftships. The Louisiana proceeding is ongoing.

Law and Analysis

This case addresses a simple but important issue of where a motion to confirm an arbitration award must be brought. Statutory language plainly shows that the award is to be confirmed in either the court agreed upon by the parties in their arbitration agreement, or in the court for the district where the award was made if the parties did not make such an agreement. This Eleventh Circuit itself has previously held that in determining where the award was made, the most important factor is where the arbitration hearing was conducted. Swiftships seeks a writ of certiorari to the Eleventh Circuit from that court's decision of March 13, 1993 in this matter, because that decision is contrary to precedent in that very circuit by holding that the award was made not where the arbitration hearing was conducted, but where the district court found that the parties agreed a future hearing may have been, but never was conducted. The Eleventh Circuit committed error of law in ruling that "[f]or purposes of section 9, the arbitration was made in Atlanta and jurisdiction was therefore proper in Atlanta." This ruling is contrary to the existing authority in that circuit that the most important factor in determining where an award is made is where the arbitration hearing was conducted. There is no contrary authority that the award was made where the parties agreed to but did not conduct arbitration, to the exclusion of where arbitration was conducted.

Additionally, the ruling is contrary to the decisions of other United States courts of appeals, which have ruled that subject matter jurisdiction and/or venue for an action to confirm an arbitration award is limited to the district where the award was made. The issue addressed in this petition therefore concerns decisions of United States courts of appeals that are in conflict. Additionally, the issue addressed concerns an important issue of federal law that has not been, but should be, settled by this Court.

Under 9 U.S.C. § 9, which addresses confirmation of arbitration awards,

> If the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, and shall specify the court, then at any time within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award. . . . If no court is specified in the agreement of the parties, then such application to confirm the award may be made to the United States court in and for the district within which such award was made.

9 U.S.C.A. §9 (West 1970). In the instant case, both the Eleventh Circuit and the district court have not looked to the requirements of section 9 or the precedent in the Eleventh Circuit, but instead have looked to where the arbitration may have been conducted, but was not.

The agreement between Swiftships and Unisys that contained the agreement to arbitrate did not contain an agreement that any judgment would be entered upon any award. Thus, the parties did not specify, under section 9, any court to confirm any such award, and the alternative provision of section 9 as to the court to confirm the award applies. That is, the "application to confirm the award may be made to the United States Court in and for the district within which such award was made." To the contrary, the ruling of the Eleventh Circuit has created a hybrid provision for section 9 that the application to confirm may be made to the United States Court in and for the district within which the district court found that the arbitrators stated the

arbitration would take place, without regard to the fact that the arbitration never took place there and no award was made there.

The ruling is directly contrary not only to the language of section 9, but also to the Eleventh Circuit's decision in *McGregor & Werner, Inc. v. Motion Picture Laboratory*, 806 F.2d 1003 (11th Cir. 1986). In that case, the court stated, with regard to whether a Florida federal district was the proper forum to determine post-arbitration actions, as opposed to a New York federal district court:

> The Florida district court, and the New York district court, concluded that the arbitration award was made in New York because the decision was signed, sealed, and mailed from New York. This conclusion ignores that fact that every other significant act took place in Florida.
>
> The employees covered by the collective bargaining agreement were employed in Florida. The agreement was negotiated in Florida, and the parties to the agreement were doing business in Florida. The controversy giving rise to the arbitration occurred in Florida, and the initial grievances were filed in Florida. Most importantly, the arbitration hearing was conducted in Florida by mutual agreement of the parties.

McGregor & Werner, Inc., 806 F.2d at 1005 and n. 1. (Emphasis

added). The court also stated that "jurisdiction is proper in the federal district court in a district within which the arbitration award was made." *Id.* at 1005 (emphasis added).

In the instant case, the panel and the district court did not look to "most importantly" where the arbitration hearing was conducted. The only hearing was conducted in Washington, D.C. Absolutely no hearing was conducted in Atlanta. The only evidence as to anything being conducted in Atlanta consisted of affidavit testimony of Loral's attorneys that the arbitrators had agreed to conduct hearings in Atlanta. However, no such hearings were ever conducted in Atlanta. No law provides that subject matter jurisdiction or venue for the confirmation of an arbitration award lies where the award "was to be made" as opposed to where it "was made." To hold that as a matter of law or fact that arbitration was conducted in Atlanta and therefore the award was made in Atlanta is to substitute an anticipated hearing that was never conducted for the reality that the arbitration hearing was conducted in Washington, D.C.

The Eleventh Circuit, in *McGregor & Werner, Inc.*, specifically agreed with the Ninth Circuit's decision in *Central Valley Typographical Union v. McClatchy Newspapers*, 762 F.2d 741 (9th Cir. 1985), wherein the court stated

> We interpret [*United States v.] ETS-Hokin [Corp.*, 397 F.2d 935 (9th Cir. 1968)] as placing primary reliance on where the arbitration was held. See also *City of Naples v. Prepakt Concrete Co.*, 490 F.2d 182, 184 (5th Cir.) (jurisdiction under the Arbitration Act is determined by where the hearing is held), *cert. den'd* 419 U.S. 843, 95 S. Ct. 76, 42 L.Ed 2d 71 (1974)..... A rule laying venue where the arbitration is held, however, recognizes that the parties

> already have indicated that the location is mutually convenient to settle their dispute.

Central Valley Typographical Union, 726 F.2d at 744. (Emphasis added).

Other courts have likewise limited subject matter jurisdiction and venue for actions under section 9, and the analogous provisions of 9 U.S.C. section 10, to the district in which the award was made. See *Sunshine Beauty Supplies, Inc. v. United States District Court*, 872 F.2d 310, 312 (9th Cir. 1989) (ruling that the venue provision of section 9 is mandatory and like those of section 10 limits jurisdiction to the district where the award was made); *Island Creek Coal Sales Co. v. City of Gainesville, Florida*, 729 F.2d 1046, 1050 (6th Cir. 1984), *cert. denied*, 474 U.S. 948, 106 S. Ct. 346, 88 L.Ed.2d 293 (1985) (ruling that section 9 provides for exclusive jurisdiction in district court where award was made); *City of Naples v, Prepakt Concrete Co.*, 490 F.2d 182, 183 (5th Cir.), *cert. denied*, 419 U.S. 843, 95 S. Ct. 76, 42 L.Ed. 2d 71 (1974) (ruling that a suit to vacate must be brought in the district court for the district in which the award was made); *United States ex rel. Chicago Bridge & Iron Co. v. ETS-Hokin Corp.*, 397 F.2d 935, 939 (9th Cir. 1968) (ruling that section 10 limits jurisdiction to vacate an award to the district where the award was made).

CONCLUSION

The ruling in the instant case is directly contrary to the criteria for determining where the arbitration award was made, and to the requirements of where such an award may be confirmed. There is absolutely no authority that an award is made where an arbitration hearing may be, but never is, conducted, particularly when the hearing is instead conducted elsewhere. The Eleventh Circuit's own authority is to the contrary, and indeed, the ruling in this case violates Eleventh Circuit prece-

dent. 9 U.S.C. section 9 makes clear that subject matter jurisdiction and venue are proper in the district where the arbitration award was made. In the instant case the district court and the Eleventh Circuit have ignored this clear requirement and have ruled that subject matter jurisdiction and venue are proper in the district in which the district court found that an arbitration hearing might be held in the future, rather than where the arbitration hearing was actually held. To the contrary, subject matter jurisdiction and venue for the confirmation of an arbitration award are proper where the award was made, and an arbitration award is made in the district in which the arbitration hearing was conducted.

APPENDIX

Opinion of the Eleventh Circuit Court of Appeals in *Loral Corporation v. Swiftships, Inc.*., 77 F.3d 420 (11th Cir. 1996) A1-A3

Order of the United States District Court for the Northern District of Georgia Denying Swiftships, Inc.'s Motions to Dismiss and to Dissolve Temporary Restraining Order and Granting Loral Corporation's Motion for Preliminary Injunction (September 19, 1995) B1-B5

Order of the Eleventh Circuit Court of Appeals denying Motion for Rehearing and Suggestion of Rehearing En Banc (May 29, 1996) C1

LORAL CORPORATION, Plaintiff-Appellee,

v.

SWIFTSHIPS, INC., Defendant-Appellant.

No. 95-9249.

United States Court of Appeals, Eleventh Circuit.

March 13, 1996.

Appeal was taken from order of the United States District Court for the Northern District of Georgia, No. 1:95-cv-2285-CC, Clarence Cooper, J., which granted motion for preliminary injunction requiring defendant to deposit certain payments pursuant to arbitration award. The Court of Appeals held that: (1) district court had jurisdiction where plaintiff was New York corporation with principal place of business in New York, defendant was Delaware corporation with principal place of business in Louisiana, and amount in controversy exceeded $50,000, and (2) subject matter jurisdiction for confirming award under the Federal Arbitration Act is not dependent upon location on which arbitration award was made.

Affirmed.

1. Federal Courts ⇐300, 340.1

District court had subject matter jurisdiction over action to confirm award under the Federal Arbitration Act where plaintiff was New York corporation with principal place of business in New York, defendant was Delaware corporation with principal place of business in Louisiana, and amount in controversy exceeded $50,000. 9 U.S.C.A. § 9; 28 U.S.C.A. § 1332.

2. Arbitration ⇐72.2

Where arbitration award was made in Atlanta and parties agreed to arbitrate in Atlanta, jurisdiction over action to confirm the award was proper in the Northern District of Georgia. 9 U.S.C.A. § 9.

3. Federal Courts ⇐198, 284

Subject matter jurisdiction for cases to confirm Federal Arbitration Act awards must be based upon either diversity of citizenship or existence of federal question, and is not dependent upon location in which arbitration award was made. 9 U.S.C.A. § 9.

4. Arbitration ⇐72.2

Statute defining appropriate venue for confirming arbitration agreement under the Federal Arbitration Act and granting personal jurisdiction over the parties to the agreement does not limit subject matter jurisdiction. 9 U.S.C.A. § 9.

Appeal from the United States District Court for the Northern District of Georgia.

Before ANDERSON and BLACK, Circuit Judges, and HENDERSON, Senior Circuit Judge.

PER CURIAM:

Loral Corporation filed this case, pursuant to § 9 of the Federal Arbitration Act (Act), 9 U.S.C. §§ 1-14 (1994), seeking confirmation of an arbitration award which required Swiftships, Inc., to deposit certain milestone payments due to Swiftships from the Arab Republic of Egypt into an escrow account. Loral also sought a temporary restraining

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order (TRO) and a preliminary injunction because Swiftships had indicated that it did not intend to deposit the payments as required. The TRO was granted. Swiftships moved to dismiss the case and to dissolve the TRO, arguing, *inter alia*, that the district court lacked subject matter jurisdiction and personal jurisdiction, that venue was improper, and that the TRO was improperly granted. Following a hearing on Swiftships' motion to dismiss and on Loral's motion for a preliminary injunction, the district court found that subject matter jurisdiction was proper based on diversity of citizenship and that personal jurisdiction and venue were proper because the parties had agreed to arbitrate in Atlanta. The court denied Swiftships' motion to dismiss. Finding that the risk of harm to Swiftships did not outweigh the risk of harm to Loral, the court denied Swiftships' motion to dissolve the TRO and granted Loral's motion for a preliminary injunction. Swiftships appeals, raising the issue of whether the district court for the Northern District of Georgia had subject matter jurisdiction.[1] We affirm.

[1] Federal district courts "have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $50,000 ... and is between ... citizens of different States." 28 U.S.C. § 1332 (1994). A corporation is a "citizen of any State by which it has been incorporated and of the State where it has its principal place of business." *Id.* at (c)(1). The parties do not dispute that the amount in controversy exceeds $50,000 or that Loral is a New York corporation with its principal place of business in New York and Swiftships is a Delaware corporation with its principal place of business in Louisiana. The district court, therefore, had original jurisdiction of this civil action pursuant to § 1332.

Citing *McGregor & Werner, Inc. v. Motion Picture Lab. Technicians Local 780*, 806 F.2d 1003 (11th Cir.1986), Swiftships argues that § 9 of the Act creates jurisdictional requirements in addition to those in § 1332. In *McGregor & Werner*, this Court held that "jurisdiction [was] proper in the federal court in the district within which the arbitration award was made." *Id.* at 1005.

[2] After reviewing the record, we hold that the district court did not err in finding that the parties agreed to arbitrate in Atlanta. For purposes of § 9, the arbitration award was made in Atlanta, and jurisdiction was therefore proper in Atlanta.

We are concerned, however, by Swiftships' interpretation of *McGregor & Werner* and do not want this opinion to be misconstrued. By holding that this case falls within the requirements of *McGregor & Werner*, we are not extending the holding in that case. *McGregor & Werner* does not limit subject matter jurisdiction to courts in the district within which the arbitration award was made. Nor do we do so here.

[3, 4] Subject matter jurisdiction for cases filed pursuant to § 9 of the Act must be based upon either diversity of citizenship or the existence of a federal question and is not dependent upon the location in which the arbitration award was made. Section 9 defines the appropriate venue for confirming an

1. Swiftships also raises the following issues: (1) whether the district court erred in finding that personal jurisdiction and venue were proper in the Northern District of Georgia, (2) whether the district court erred in determining that the arbitration award was final for purposes of confirmation, and (3) whether the district court abused its discretion in granting the preliminary injunction. These issues are without merit, and we affirm. *See* 11th Cir.R. 36-1.

arbitration agreement and grants personal jurisdiction over the parties to the agreement; it does not limit subject matter jurisdiction. The district court did not err in finding that it had subject matter jurisdiction based on diversity of citizenship.

AFFIRMED.

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Loral Corporation,	*	
Plaintiff,	*	**CIVIL ACTION NO.**
	*	
versus	*	**1:95-CV-2285-CC**
	*	
Swiftships, Inc.,	*	
Defendant	*	

ORDER

Pending before the Court are: (1) Motion to Dismiss Petition to Confirm Arbitral Award Pursuant to Rule 12(b) and to Dissolve Temporary Restraining Order, and (2) Petitioner's Motion for a Preliminary Injunction.

BACKGROUND

In April 1990 Respondent entered into a contract with the Arab Republic of Egypt. In June 1992 Respondent and UNISYS entered into a subcontract. A dispute arose between Respondent and UNISYS in connection with the subcontract, and pursuant to an arbitration clause contained in the subcontract the parties instituted arbitration proceedings in accordance with the American Arbitration Act and the rules of the American Arbitration Association.

On March 25, 1995 the arbitration panel, consisting of three members, issued an Order of the Panel which provided that Respondent deposit any milestone payments received by Respondent, pursuant to the contract between Respondent and the Arab Republic of Egypt, into an escrow account. The money

deposited into the escrow account was then to be paid to UNISYS within three business days.

According to the evidence presented by Petitioner, on May 5, 1995 UNISYS assigned the subcontract to Petitioner pursuant to an asset purchase agreement. The assignment included the arbitral award and the obligation to perform under the subcontract.

On September 8, 1995, this Court entered a temporary restraining order ("TRO") based on Petitioner's representation that Respondent had indicated to Petitioner that Respondent did not intend to place milestone payments in an escrow account and pay such money to Petitioner. Specifically, the TRO provided that

> Respondent, Swiftships, Inc. is hereby ordered to deposit any milestone payments received by Swiftships, Inc. pursuant to the contract between Swiftships, Inc. and the Arab Republic of Egypt as described in Petitioner's Motion into an interest bearing escrow account as required by the arbitration award attached to Loral's Petition and Brief, and Swiftships, Inc. is hereby enjoined from spending or otherwise disposing of any portion of such payments or dispersing from the escrow account an part of such payments until further order of this Court.

On September 14, 1995 this Court extended the above-referenced TRO for a period of ten days, or, if sooner, until this Court ruled on Petitioner's Motion for Preliminary Injunction. The parties appeared for a hearing on the pending motions on September 18, 1995.

DISCUSSION

Respondent moves to dismiss the petition to confirm the arbitral award on the grounds that the Court lacks subject matter jurisdiction, the Court lacks personal jurisdiction and venue is improper in the Northern District of Georgia.

First, the Court finds that subject matter jurisdiction is proper in this Court based on diversity jurisdiction. 28 U.S.C. § 1332(a)(1). Respondent does not dispute that diversity jurisdiction exists.

Second, the Court finds that personal jurisdiction and venue are proper in this Court. Personal jurisdiction and venue are proper in any jurisdiction in which the parties agree to arbitrate, or in which the arbitration panel selects to arbitrate where the parties have consented to allow the arbitrators to determine the site of the arbitration. McGregor & Werner Inc. v. Motion Picture Laboratory Technicians Local 780, 806 F.2d 1003 (11th Cir. 1986); City of Naples v. Prepakt Concrete Co., 490 F.2d 182, 184 n.5 (5th Cir. 1974).

While the Court has found no case law directly on point, the Court determines that it is not necessary that arbitration actually occur at the selected site in order for venue and personal jurisdiction to be proper. By agreeing to arbitrate in a certain jurisdiction a party is agreeing to avail itself of the benefits of that jurisdiction and is willing to subject itself to the power of the Court in that jurisdiction such that personal jurisdiction immediately becomes proper. Similarly, the party is representing that the jurisdiction is convenient such that venue is proper.

In this case the parties agreed to let the arbitration panel determine the site of the arbitration. The parties dispute whether the panel ever did so; however, the only affidavits presented to the Court which address this issue indicate that the arbitration panel selected Atlanta, Georgia as the site of the arbitration. Respondent presents discussion, but no evidence to the contrary.

Third, Respondent asserts that the Order of the Panel

does not constitute a final arbitration award and, thus, this action is not ripe for judicial determination. Section 1 of the Order of the Panel requires Respondent to establish the escrow account and may payments to UNISYS. Section 1 is not based on any conditions or contingencies. Moreover, Section 5 of the Order of the Panel states: "This Order may be confirmed and/or entered as a judgment in any court of competent jurisdiction only upon default, breach, non-compliance or failure to perform this Order." As such, the Court finds that Section 1 of the Order of the Panel does constitute a final arbitration award.

Respondent's motion to dismiss is DENIED.

Respondent moves to dissolve the TRO on the additional grounds that the TRO was issued without security being required and because the risk of insolvency to Respondent outweighs the any risk of harm to Petitioner.

Under the facts and circumstances of this case the Court finds that the risk of insolvency to Respondent does not outweigh the risk of harm to Petitioner. The Court is not requiring that Respondent make payments to Petitioner or any third party. Moreover, Respondent has not presented evidence indicating that it had a reasonable expectation to keep the money which has been escrowed, rather than paying it to a third party, whether that third party be UNISYS or Petitioner.

Finally, it is within the Court's discretion to determine the amount of a security bond. At the time the TRO went into effect there was no evidence before the Court indicating the amount of damages Respondent stood to suffer in the event the TRO was improperly obtained by Petitioner. The Court will not dissolve the TRO based on this ground; however, in light of the evidence now presented by Respondent, the Court directs Petitioner to post a security bond in the amount of $2,000,000.00 within two days of the date of this Order.

Respondent's motion to dissolve the TRO is DENIED.

Based on the foregoing, and after consideration of all the evidence, law and argument presented in this case, the Court

finds that Petitioner has met its burden of demonstrating that a preliminary injunction is merited.

Petitioner's motion for preliminary injunction is GRANTED.

SO ORDERED this 19th day of September, 1995.

_____

CLARENCE COOPER
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT
No. 95-9249

Loral Corporation,
Plaintiff-Appellee,
versus
Swiftships, Inc.,
Defendant-Appellant.

On Appeal from the United States District Court for the
Northern District of Georgia

ON PETITION(S) FOR REHEARING AND SUGGESTION(S) OF REHEARING EN BANC
(Opinion , 11th Cir., 19, F.2d).

BEFORE: ANDERSON AND BLACK, Circuit Judges, HENDERSON, Senior Circuit Judge.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestion(s) of Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

UNITED STATES CIRCUIT JUDGE
ORD-42
(6/95)

(2)

Supreme Court, U.S.
FILED
SEP 5 1996
CLERK

NO. 96-390

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

SWIFTSHIPS, INC.

Petitioner,

versus

LORAL CORPORATION

Respondent

On Petition for Writ of Certiorari To The
United States Court of Appeals For The Fifth Circuit

SUPPLEMENTAL APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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4 pp

LORAL CORPORATION,
Plaintiff-Appellee,

v.

SWIFTSHIPS, INC., Defendant-
Appellant.

No. 95-9249

United States Court of Appeals,
Eleventh Circuit.

March 13, 1996.

Appeal from the United States District Court for the Northern District of Georgia.

Before ANDERSON and BLACK, Circuit Judges, and HENDERSON, Senior Circuit Judge.

PER CURIAM:

Loral Corporation filed this case, pursuant to § 9 of the Federal Arbitration Act (Act), 9 U.S.C. §§ 1-14 (1994), seeking confirmation of an arbitration award which required Swiftships, Inc., to deposit certain milestone payments due to Swiftships from the Arab Republic of Egypt into an escrow account. Loral also sought a temporary restraining order (TRO) and a preliminary injunction because Swiftships had indicated that it did not intend to deposit the payments as required. The TRO was granted. Swiftships moved to dismiss the case and to dissolve the TRO, arguing, in*ter alia*, that the district court lacked subject

matter jurisdiction and personal jurisdiction, that venue was improper, and that the TRO was improperly granted. Following a hearing on Swiftships' motion to dismiss and on Loral's motion for a preliminary injunction, the district court found that subject matter jurisdiction was proper based on diversity of citizenship and that personal jurisdiction and venue were proper because the parties had agreed to arbitrate in Atlanta. The court denied Swiftships' motion to dismiss. Finding that the risk of harm to Swiftships did not outweigh the risk of harm to Loral, the court denied Swiftships' motion to dissolve the TRO and granted Loral's motion for a preliminary injunction. Swiftships appeals, raising the issue of whether the district court for the Northern District of Georgia had subject matter jurisdiction.[1] We affirm.

Federal district courts "have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $50,000 . . . and is between . . . citizens of different States." 28 U.S.C. § 1332 (1994). A corporation is a "citizen of any State by which it has been incorporated and of the State where it has its principal place of business." *Id.* at (c)(1). The parties do not dispute that the amount in controversy exceeds $50,000 or that Loral is a New York corporation with its principal place of business in New York and Swiftships is a Delaware corporation with its principal place of business in Louisiana. The district court, therefore, had original jurisdiction of this civil action pursuant to § 1332. Citing *McGregor & Werner, Inc. v. Motion Picture Lab. Technicians Local 780,* 806 F.2d 1003 (11th Cir. 1986), Swiftships argues that § 9 of the Act creates jurisdictional requirement in addition to those in § 1332. In *McGregor & Werner*, this court held that "jurisdiction [was] proper in the federal court in the district within which the arbitration award was made." *Id.* at 1005.

After reviewing the record, we hold that the district court

did not err in finding that the parties agreed to arbitrate in Atlanta. For purposes of § 9, the arbitration award was made in Atlanta, and jurisdiction was therefore proper in Atlanta.

We are concerned, however, by Swiftships' interpretation of *McGregor & Werner* and do not want this opinion to be misconstrued. By holding that this case falls within the requirements of *McGregor & Werner*, we are not extending the holding in that case. *McGregor & Werner* does not limit subject matter jurisdiction to courts in the district within which the arbitration award was made. Nor do we do so here.

Subject matter jurisdiction for cases filed pursuant to § 9 of the Act must be based upon either diversity of citizenship or the existence of a federal question and is not dependent upon the location in which the arbitration award was made. Section 9 defines the appropriate venue for confirming an arbitration agreement and grants personal jurisdiction over the parties to the agreement; it does not limit subject matter jurisdiction. The district court did not err in finding that it had subject matter jurisdiction based on diversity of citizenship.

AFFIRMED.

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[1] Swiftships also raises the following issues: (1) whether the district court erred in finding that personal jurisdiction and venue were proper in the Northern District of Georgia, (2) whether the district court erred in determining that the arbitration award was final for purposes of confirmation, and (3) whether the district court abused its discretion in granting the preliminary injunction. These issues are without merit, and we affirm. *See* 11th Cir.R. 36-1.